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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 JAMES B. PINKERTON,
8
9 Plaintiff,

10 v.

11 HANSON MOTORS, INC. and STEVEN
12 W. HANSON,
13 Defendants.

CASE NO. C16-5634BHS

ORDER DENYING
PLAINTIFF'S MOTION TO
AMEND JUDGMENT AND
REVERSE JUDGMENT

14 This matter comes before the Court on Plaintiff James Pinkerton's ("Pinkerton")
15 emergency motion to amend judgment (Dkt. 29) and motion to reverse judgment or order
16 (Dkt. 31). The Court has considered the pleadings filed in support of and in opposition to
17 the motions and the remainder of the file and hereby denies the motions for the reasons
18 stated herein.

19 **I. PROCEDURAL AND FACTUAL BACKGROUND**

20 On July 15, 2016, Pinkerton filed an employment discrimination complaint against
21 Defendants Hanson Motors, Inc., and Steven Hanson (collectively "Hanson"). Dkt. 1.
22

1 On December 15, 2016, Hanson moved to dismiss for insufficiency of process and
2 insufficiency of service of process. Dkt. 5. On February 8, 2017, the Court granted the
3 motion on the merits and granted Pinkerton leave to perfect service. Dkt. 11. On
4 February 17, 2017, Pinkerton filed an affidavit of service of summons and complaint
5 showing that Matthew Howard served the papers on Frank Kersul. Dkt. 15.

6 On March 8, 2017, Hanson moved to dismiss for insufficiency of process and
7 insufficiency of service of process. Dkt. 17. On May 3, 2017, the Court granted the
8 motion in part and denied the motion in part. Dkt. 28. The Court also ordered as
9 follows:

10 Pinkerton must file an affidavit of service of summons and complaint no
11 later than May 19, 2017. Failure to comply or otherwise respond will result
12 in **DISMISSAL without prejudice** without further order of the Court.
Failure to perfect service a third time will most likely result in
DISMISSAL without prejudice.

13 *Id.* at 5.

14 That night, Pinkerton emailed Hanson's attorney, Ryan Hammond, asking various
15 questions regarding service. Dkt. 29-1 at 1. On May 5, 2017, Mr. Hammond responded
16 and informed Pinkerton that the corporate defendant would stipulate to service via the
17 attorney if Pinkerton agreed to dismiss the individual defendant without prejudice. *Id.* at
18 3. Pinkerton did not respond to Mr. Hammond's email.

19 On May 22, 2017, the Clerk noticed that Pinkerton had failed to file an affidavit of
20 service or otherwise respond to the Court's order. Thus, the Clerk closed the case
21 without further order of the Court.
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1 Later that day, Pinkerton filed an emergency motion to amend the judgment. Dkt.
2 29. On June 26, 2017, Hanson responded. Dkt. 30. On June 30, 2017, Pinkerton filed a
3 motion to reverse judgment or order. Dkt. 31. On July 5, 2017, Hanson filed a surreply.
4 Dkt. 33. On July 8 and 11, 2017, Pinkerton filed replies. Dkts. 34, 35. On July 17, 2017,
5 Hanson filed a response, Dkt. 36, and Pinkerton filed a reply, Dkt. 38. On July 18, 22,
6 and 23, 2017, Pinkerton filed letters and exhibits in support of his motions. Dkts. 39–44.

7 II. DISCUSSION

8 “On motion and just terms, the court may relieve a party or its legal representative
9 from a final judgment, order, or proceeding for the [various] reasons” Fed. R. Civ.
10 P. 60(b). Although Pinkerton fails to explicitly state the legal basis for his motions, he
11 continually alleges that Hammond engaged in numerous acts of fraud and misconduct.
12 *See, e.g.*, Dkt. 31 at 11–12. Rule 60(b)(3) provides that a moving party may obtain relief
13 from adverse orders for “fraud (whether heretofore denominated intrinsic or extrinsic),
14 misrepresentation, or other misconduct of an adverse party.” “To prevail, the moving
15 party must prove by clear and convincing evidence that the verdict was obtained through
16 fraud, misrepresentation, or other misconduct and the conduct complained of prevented
17 the losing party from fully and fairly presenting the defense.” *Casey v. Albertson’s Inc.*,
18 362 F.3d 1254, 1260 (9th Cir. 2004) (quoting *De Saracho v. Custom Food Machinery,*
19 *Inc.*, 206 F.3d 874, 880 (9th Cir. 2000)).

20 In this case, Pinkerton has failed to show with clear and convincing evidence that
21 Mr. Hammond engaged in any misconduct of any kind. Mr. Hammond relayed an offer
22 of mutual stipulation, and Pinkerton failed to respond. More importantly, Pinkerton

1 failed to comply with the Court's order of otherwise responding. Pinkerton twice failed
2 to properly serve Hanson, and, having missed these deadlines to effectuate service, the
3 Court set a new deadline and explicitly warned Pinkerton of the repercussions for missing
4 the deadline. Not only did Pinkerton fail to serve any defendant by that deadline,
5 Pinkerton also failed to reply to the Court in any manner whatsoever. Thus, Pinkerton's
6 failures were his own and there is no evidence of misconduct by Mr. Hammond.
7 Accordingly, dismissing his complaint without prejudice was an appropriate action.

8 **III. ORDER**

9 Therefore, it is hereby **ORDERED** that Pinkerton's emergency motion to amend
10 judgment (Dkt. 29) and motion to reverse judgment or order (Dkt. 31) are **DENIED**.

11 Dated this 7th day of August, 2017.

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14 **BENJAMIN H. SETTLE**
United States District Judge